

**FRANCHISE TAX BOARD
MINUTES
FEBRUARY 8, 2000**

The Franchise Tax Board met in open session at 2:00 p.m. at the State Board of Equalization, 450 N Street, Hearing Room 121, Sacramento, California. Present were Hon. Kathleen Connell, Hon. Dean Andal, and Hon. B. Timothy Gage.

Franchise Tax Board

Staff Participating: Gerald H. Goldberg, Brian W. Toman, Donald L. Buxton, Joan Hanacek, Titus Toyama, Frank Lanza, Johnnie Lou Rosas, Anne Smith, Ben Miller, Debra Petersen, and Katie Horn.

Others Participating: Lenny Goldberg representing Children Now, National Center for Youth, and California Tax Reform Association, Frank Giebatowski representing Microsoft, Peter Horsburg representing Microsoft, Robert A. Weinberger representing H & R Block, Bernie McKay representing Intuit, Jason Mahler representing Computer & Communications Industry Association, Teresa Casazza representing American Electronics Association, Gina Rodriguez representing Spidell Publishing, Ross Warren representing Employment Development Department, Dave Doerr representing Cal-Tax, Richard E.V. Harris representing himself.

Item 1. - Approval of Board Minutes

The Minutes of the December 16, 1999, Franchise Tax Board meeting were unanimously approved.

Item 2. – Child Support

Gerald Goldberg introduced Joan Hanacek, the department's new Child Support Project Director. He also reported that we are getting good assistance and timely approvals from the federal government with respect to approvals necessary for increasing child support collections, and that he is very comfortable with the progress staff is making. He also explained that the department would have increasing collections during the system design phase, but that it will be seven years before the actual rollout of the complete statewide-automated system.

Member Andal inquired if the child support advocacy groups were aware of the seven-year rollout plan. Lenny Goldberg, representing Children Now and National Center for Youth, testified that while seven years might be longer than the child support advocacy groups had anticipated, their goal was to make the program ultimately work.

Chair Connell inquired about federal penalties. Gerald Goldberg stated that California is required to pay some penalties and will likely continue to pay penalties throughout the seven-year rollout period unless there is a change of view at the federal level.

Item 3. – Internet Filing

Frank Lanza discussed current year electronic filing statistics. Chair Connell inquired about the demographics of taxpayers who are e-filing in California. Mr. Lanza reported that this information is not readily available at this time.

Mr. Lanza discussed the three Internet filing alternatives with the Board. Alternative 1 continues the existing public-private partnership between the Franchise Tax Board and the electronic tax preparation industry. Under this alternative, taxpayers can file electronically through a private vendor that uses batch processing to electronically file state returns with the Franchise Tax Board. Alternative 2 involves staff development of an interactive website allowing taxpayers to file directly with the Franchise Tax Board using staff developed software to be made available on the website. Alternative 3 involves development of an Internet portal. Taxpayers would use prepackaged or commercial web-based tax preparation software to file their tax return directly with the Franchise Tax Board using the Internet.

Testimony recommending Alternative 3 as the best option was presented by Peter Horsburg and Frank Giebatowski representing Microsoft, Robert A. Weinberger representing H & R Block, Bernie McKay representing Intuit, Jason Mahler representing Computer and Communications Industry Association, and Teresa Casazza representing American Electronics Association.

Member Gage inquired whether all three alternatives could exist side by side. Mr. Lanza told the Board that while all three alternatives could exist side by side, it might be difficult due to resource problems for staff to simultaneously complete implementation of both Alternatives 2 and 3 by the 2001 tax filing season.

Lenny Goldberg, representing California Tax Reform Association, testified that they supported Alternative 2, and that they also supported Alternative 3, but that they believed that Alternatives 2 and 3 could co-exist. Lenny Goldberg was concerned about the privacy of financial information gathered by tax preparation firms with non-tax preparation, full service financial affiliates. He stated that legislation will be proposed to prevent such sharing of financial information.

The Board voted 2-0 (Member Gage abstaining) to adopt Alternative 3, having been informed by Gerald Goldberg that Alternative 1 is being done currently and would continue to be done.

Chair Connell discussed the issue of the contract term for links to the Franchise Tax Board's website, expressing her preference for multiyear commitments by the tax preparation software vendors.

Item 4. – Nanny Tax Matters

Johnnie Lou Rosas told the Board that SB 285 (Speier) has been amended and that the Franchise Tax Board is now out of the bill. She also told the Board that there are approximately 31,000 employers of household workers that are currently paying the nanny

tax, of which approximately 11,000 remit the nanny tax on an annual rather than a quarterly basis.

Ross Warren from the Employment Development Department told the Board that the nanny tax is not easily simplified. This is due to specific federal law requirements, particularly those relating to the timing of the payment of unemployment benefits (within 14 days of application under federal law) and the actual calculation of the benefit payment amounts.

Gina Rodriguez, representing Spidell Publishing, testified that in addition to the nanny tax problem, there were similar reporting problems with senior home care that ultimately will need to be addressed. Johnnie Lou Rosas also told the Board that the current EDD instruction form and booklet for the nanny tax is 67 pages long.

Item 5. – Update on Performance Audit

Gerald Goldberg told the Board that staff is continuing to attempt to implement the performance audit recommendations, and highlighted two issues. First, Mr. Goldberg told the Board that a budget change proposal to reflect the planned phaseout of 18 personnel years, as a consequence of electronic filing, had been approved by the Department of Finance. Also, fewer tax forms were being mailed to save on postage costs.

Member Andal requested an update on the following three issues concerning the Performance Audit.

- Vacant Manager and Supervisor Positions. Staff reported that there were 34 currently vacant manager/supervisor positions. Mr. Andal noted that this is four positions more than what normally is required by the Department of Finance for salary savings (i.e. 5.3 percent), and asked whether these four positions could be permanently eliminated. Mr. Goldberg told the Board that some of these positions are not fungible, and staff agreed to report back on the status of these positions.
- Facilities – Evaluate the Use of Hoteling. Mr. Andal asked that staff report on hoteling for field office staff.
- Facilities – Use of Imaging. Mr. Andal requested that staff re-evaluate the costs and benefits of using imaging technology as an alternative to storing hardcopy paper files, taking into account savings resulting from increased electronic filing.

Staff will provide an update on these items at a future Board meeting.

Item 6. – Status Report Regarding Matters Discussed at the December 16, 1999, Taxpayers' Bill of Rights Hearing

Anne Smith, FTB's Taxpayer Advocate, told the Board that staff has sent written responses with respect to all 29 proposals that were offered at the Taxpayers' Bill of Rights Hearing. Ms. Smith told the Board that staff is continuing to work on two items, one regarding

Richard E.V. Harris' requests under the California Public Records Act, and the second was Tim Hayes' and Jess Penilla's (representing Deloitte & Touche) regarding the Franchise Tax Board's protest hearing process.

Richard E.V. Harris, representing himself, testified that some of his Public Records Act requests were quite old, and Member Andal asked that any remaining unfilled requests be placed on the agenda for the next Board meeting.

Ms. Smith also told the Board that staff has been working with John Kehoe from the Commission on Aging on solutions for soliciting contributions, and that Mr. Kehoe was pleased with the progress being made by staff.

Item 7. – Update on Governor's Budget

Titus Toyama reported that the Governor's budget is proposing \$412 million for FTB in FY 2000/01, an increase of approximately \$36 million over the approved budget for the current fiscal year. The increase is due to baseline cost increases, child support program augmentations, primarily for procurements, and technology projects.

Item 8. – Legislative Matters

- a. Consideration of legislative proposals suggested at the Taxpayers' Bill of Rights Hearing on December 16, 1999.

Dave Doerr, representing Cal-Tax, testified briefly in support of TP 00-04.

The Board voted 2-0 (Member Gage abstaining) to sponsor all four taxpayer proposals:

TP 00-01	Filing S Corporation Shareholders' Consents/Technical
TP 00-02	Assignment of Lottery Winnings/Tax Exempt
TP 00-03	Alternative Minimum Tax Credit for Corporations/Technical
TP 00-04	Financial Organizations In-Lieu Tax

- b. Bills for Position were approved on a 2-0 vote (Member Gage abstaining), as follows:

<u>Legislative Bill</u>	<u>Board Position</u>	<u>Legislative Bill</u>	<u>Board Position</u>
AB 152	Update Accepted	AB 1728	Support
AB 1016	Update Accepted	SB 129	No Action
AB 1192	Support	SB 1169	Off Calendar
AB 1254	No Position		

Item 9. – Regulation Matters

- a. Report on Proposed Regulation 25106.5-1 (Combined Reporting-Intercompany Transactions). The Board unanimously accepted the staff's status report.

- b. Report on Proposed Regulation 25137(c) (Sales Factor – Occasional Sale of Intangible Assets). The Board unanimously accepted the staff's status report.
- c. Report on Proposed Regulations 19041 and 19044 (Protests). The Board directed staff to hold a symposium on March 3, 2000. Member Andal expressed his expectation that members of the public attending the symposium would be prepared to offer specific alternative language to staff's proposals so that the Board could choose between alternative language.
- d. Report on Proposed Regulations 25106.5 (Mechanics of Combined Reporting) and 25106.5-2 (Capital Gains in a Combined Report). The Board unanimously accepted the staff's status report.
- e. Report on Proposed Regulation 17951-4 (Income Sourcing). The Board unanimously accepted the staff's status report.
- f. Report on Proposed Regulations 17252.5-1, 17265-1, 17266-1, 17267.2-1, 24356.2-1, 24356.3-1, 24356.4-1, 24356.7-1 (Recapture of Deduction for Qualified Property Previously Used). The Board unanimously accepted the staff's status report.
- g. Report on Proposed Regulation 23334 (Tax Clearance Certificate). The Board unanimously accepted the staff's status report.
- h. Report on Proposed Regulation 18567 (Extensions of Time for Filing Income Tax Returns). The Board unanimously accepted the staff's status report.
- i. Consideration of Proposed Regulation Projects under Revenue and Taxation Code sections 17276 and 24416 (Net Operating Losses). The Board unanimously approved staff's recommendation to draft regulatory language and post it on the department's website for public comment.

Item 10. – Administrative Matters

- a. FY 2000/01 Budget – Spring Finance Letters

The Board approved 2-0 (Member Gage abstaining) the following Spring Finance Letters for 2000/01:

- #3: Facilities Repair and Improvements
- #4: Level of Service

The Board took no action regarding the remaining two Spring Finance Letters, but agreed that the proposals could be forwarded to the Department of Finance:

- #1: Homeowners and Renters Assistance
- #2: Information Storage Section Expansion

Staff will provide additional information on these remaining two Spring Finance Letters at the next Board meeting.

b. The Board unanimously approved the following Facilities Action Requests (Form 9):

1. Santa Ana District Office: Provide Public Service Lobby Security Upgrades.
2. Central Office: 9645 Butterfield Way/Expansion of Data Center Input/Output Room.
3. Central Office: 9645 Butterfield Way / Construct Small Server Room.

Item 11. – Applications for Voluntary Disclosure

The Board unanimously approved the Applications for Voluntary Disclosure pursuant to Revenue and Taxation Code section 19191.

Item 12. – Revenue and Taxation Section 23101.5 Petition

The Board unanimously approved an application for an extension submitted by Concorp International Limited, d.b.a. Afcorp, Inc.

Item 13. – California Tax Policy Conference

The Board voted unanimously to direct staff to locate suitable potential sites for the Tax Policy Conference, to be held in Los Angeles in 2001, Sacramento in 2002, and San Jose in 2003, and to report back to the Board before the final meeting of this calendar year.

Item 14. – Executive Officer's Time

Mr. Goldberg had no items for discussion.

Item 15. – Board Members' Time

The Board had no items for discussion.

Item 16. – Chair Announcement Regarding Closed Session

Chair Connell announced the agenda for the Closed Session, pursuant to Government Code section 11126.3.

The meeting was adjourned at 5:07 p.m.